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United Nations Office on Drugs and Crime

UNODC/TPB's role in preventing and combating CBRN terrorism

Meeting of the Global Partnership against the spread of weapons and materials of mass destruction

Boston, USA, 13-14 March 2012



**Resolution 1373
Security Council**

**Resolution 1540
& subsequent ones
Security Council**

**Resolutions 1267,
1822 & subsequent ones
Security Council**

16 INTERNATIONAL INSTRUMENTS
**Convention on the Physical Protection of
Nuclear Material and 2005 Amendment**
Maritime Protocols
Terrorist Bombings Convention
Nuclear Terrorism Convention



United Nations Conventions

Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons – 173 States Parties

International Convention Against the Taking of Hostages – 168 States Parties

International Convention for the Suppression of Terrorist Bombings – 164 States Parties

International Convention for the Suppression of the Financing of Terrorism – 178 States Parties

International Convention for the Suppression of Acts of Nuclear Terrorism – 77 States Parties



Instruments related to civil aviation

Convention on Offences and Certain other Acts Committed on Board Aircraft – 185 States Parties

Convention for the Suppression of the Unlawful Seizure of Aircraft – 185 States Parties

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation – 188 States Parties

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation – 171 States Parties

Convention on the Marking of Plastic Explosives for the Purpose of Detection – 147 States Parties



Maritime agreements

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation – 158 States Parties

+ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation – 21 States Parties

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf – 146 States Parties

+ Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf – 17 States Parties



IAEA Conventions

**Convention on the Physical Protection of Nuclear Material –
144 States Parties**

**2005 Amendment to the Convention on the Physical
Protection of Nuclear Material**

– 53 adherences (not yet in force)



Common points to the Conventions

- Establish offences
- Require States to criminalize offences
- Establish the principle *aut dedere aut judicare*
= “either extradite or prosecute”
- Provide for international cooperation mechanisms



Is the incrimination of terrorism necessary?

The Conventions

- ✓ Do not require the incrimination of the offence of “terrorism”
- ✓ Require the incrimination of certain offences independently of terrorist motivation

The terrorist motivation may be considered as an aggravating circumstance



Terrorist Bombings Convention

- Criminalizes the act of delivering, placing, discharging or detonating *in certain places* explosive or other lethal devices designed or capable to cause death, serious bodily injury or substantial material damage
- Definition of explosive or other lethal device includes a weapon or device designed or capable to cause death, serious bodily injury or substantial material damage through release, dissemination or impact of **toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material**
- Convention covers preparatory conducts, not only the actual explosion



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**Convention
on the Physical Protection
of Nuclear Material**

LEGAL SERIES No.12



INTERNATIONAL ATOMIC ENERGY AGENCY, VIENNA, 1982

**Amendment to the Convention on the
Physical Protection of Nuclear Material**

IAEA International Law Series No. 2



IAEA

International Atomic Energy Agency



Convention on the Physical Protection of Nuclear Material (CPPNM)

Threefold scope:

- physical protection of nuclear material **used for peaceful purposes** during **international** nuclear transport
- criminalization of certain offences
- international cooperation



Article 7 of the CPPNM

1. The intentional commission of:
 - a. an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and **which causes or is likely to cause** death or serious injury to any person or substantial damage to property;
 - b. a theft or robbery of nuclear material;
 - c. an embezzlement or fraudulent obtaining of nuclear material;
 - d. an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;



Article 7 of the CPPNM (cont'd)

e. a **threat**:

- i. to use nuclear material to cause death or serious injury to any person or substantial property damage, or
- ii. to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

f. an **attempt** to commit any offence described in paragraphs (a), (b) or (c); and

g. an act which constitutes **participation** in any offence described in paragraphs (a) to (f) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article **punishable by appropriate penalties which take into account their grave nature.**



2005 Amendment to the CPPNM

- It extends the scope of the 1980 Convention to also cover the physical protection of nuclear material used for peaceful purposes in **domestic** use, storage and transport, and of **nuclear facilities** used for peaceful purposes.
- It also provides for **new offences** and for expanded cooperation among States with regard to implementing rapid measures to locate and recover stolen or smuggled nuclear material; mitigating any radiological consequences of sabotage; and preventing and combating related offences.



New Article 7 Amendment to the CPPNM

*Paragraph 1 of **Article 7** of the CPPNM is replaced by the following text:*

1. The intentional commission of:
 - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property **or to the environment;**
 - (b) a theft or robbery of nuclear material;
 - (c) an embezzlement or fraudulent obtaining of nuclear material;
 - (d) **an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;**



New Article 7 Amendment to the CPPNM (cont'd)

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;

(f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;



New Article 7 Amendment to the CPPNM (cont'd)

(g) a threat:

- (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e), or
- (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(h) an attempt to commit any offence described in sub-paragraphs (a) to (e);

(i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);

(j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and



New Article 7 Amendment to the CPPNM (cont'd)

- (k) an act which contributes to the commission of any offence described in sub-paragraphs
 - (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or
 - (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g)
- shall be made a punishable offence by each State Party under its national law.



Nuclear Terrorism Convention

- Broadly criminalizes possession and use of radioactive material
- Partly different scope and definitions than the CPPNM and its Amendment (e.g. covers material used for military purposes, broader definition of nuclear facility..)



Article 2 Nuclear Terrorism Convention

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
 - (a) **Possesses** radioactive material or makes or possesses a device:
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment;
 - (b) **Uses** in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment; or
 - (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.



Article 2 Nuclear Terrorism Convention (cont'd)

2. Any person also commits an offence if that person:
 - (a) **Threatens**, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or
 - (b) **Demands** unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.
3. Any person also commits an offence if that person **attempts** to commit an offence as set forth in paragraph 1 of the present article.



Article 2 Nuclear Terrorism Convention (cont'd)

4. Any person also commits an offence if that person:

(a) Participates as an **accomplice** in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) **Organizes or directs others** to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) **In any other way contributes** to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.



WMD -related offences in the 2005 maritime agreements

- Amend existing maritime legal regime
- Definitions of chemical and biological weapons in line with existing conventions
- New offences
 - ✓ Using a WMD against or on a ship (or fixed platform)
 - ✓ Discharging a WMD from a ship (or fixed platform)
 - ✓ Unlawfully transporting nuclear weapons on board ships



- **The international legal framework against terrorism provides ample coverage for CBRN-related offences**
- **Sets forth specific requirements to:**
 - ✓ **criminalise CBRN- related offences**
 - ✓ **Establish extradition and mutual legal assistance channels to bring to justice perpetrators of these offences**



- TPB is working closely with other programmes of UNODC and with relevant international organizations and other partners in assisting States in their fight against CBRN terrorism
- UNODC is an active member of the CTITF Working Group on WMD
- UNODC is an official observer to the Global Initiative to Combat Nuclear Terrorism
- UNODC has developed a project on technical assistance on the ratification and implementation of the international legal framework against CBRN terrorism based on:
 - Awareness raising and promotion of ratification
 - Legislative assistance and capacity building for effective implementation
 - Development of technical assistance tools



Joint UNODC/IAEA Model Legislative Provisions against Nuclear Terrorism

- *Merge the offences set forth in the CPPNM and in the Nuclear Terrorism Convention. Bracketed parts reflect additional language introduced by the 2005 Amendment to the CPPNM*
- *Handle the offences in an integrated and coordinated manner. With regard to attempt, participation, contribution and other ancillary conducts reference is made to Section 2 and 3 of UNODC's Model Legislative Provisions against Terrorism*
- https://www.unodc.org/tldb/en/model_laws_treaties.html



Examples of activities

- Republic of Moldova: Legislative Drafting Workshop on illicit trafficking of nuclear and other radioactive material (with US Department of State) (Chisinau, January 2012)
- Indonesia: National workshop on the ratification of the Nuclear Terrorism Convention (Jakarta, December 2011)
- Regional Workshop on CBRN and maritime terrorism for 16 Caribbean countries, Barbados, November 2010
- Workshop for Central Asian Countries on Non-Proliferation and International Legal Cooperation against CBRN Terrorism, Ashgabat, Turkmenistan, December 2009



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